In the High Court of Punjab and Haryana, at Chandigarh.

R.S.A. No. 4383 of 2003

Date of Decision: .12.2007

Darshan Singh and Others

…Appellants

Versus

Harbans Singh and Others

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. H.N.Mehtani, Advocate
for the appellants.

Mr. Arihant Jain, Advocate
for the respondents.

RAJESH BINDAL, J.

The defendants are in second appeal before this Court against the judgement and decree passed by learned lower Appellate Court whereby the judgement and decree of learned trial Court was reversed and the suit for permanent and mandatory injunction filed by respondent No.1/plaintiff restraining the appellants/defendants from stopping the flow of dirty water in the existing drains of the village and also restraining them from digging new drains, was decreed. Learned trial Court had dismissed the suit.

After hearing learned counsel for the parties, this Court vide order dated February 3, 2005, directed the appointment of a Public Health Engineer to visit the spot and report about the following two aspects:-

i) Whether a drain exists as on today in any condition outside the house of the appellants and whether it appears to have been closed by the appellants.

ii) Whether it is viable to have a drain outside the house of the appellants so as to ensure proper water disposal of

the house of the plaintiff-respondent.

The Local Commissioner, namely, Mr. Baljit Singh, Sub Divisional Engineer, Water Supply & Sanitation, Sub Division No.2, Malerkotla, has submitted his report, which is to the following effect:-

> "I have also inspected the old site of the drain which is exist in the house of Jagar Singh. Back side house of Darshan Singh after excavation 2 feet deep in the house of Jagar Singh the old drain very much present on the spot. But now the drain was filled with earth in the house of Jagar Singh which shows that the disputed drain was very much present in the past and it appears to have been closed by the appellant.
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> 2. That in submitted the report issue No.2 it is viable to have a drain outside the house of appellant there is no harm causes to the plaintiff respondent and the water disposal of plaintiff respondent is very much easy and clear from this drain to flow easy way. It is pertinent to mention here that as per site plan submitted with his report point E to F in street as well as the existence of the drain and the disposal of the water is easy in the main drain.
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> In view of the above paras I have the opinion that the drain is very much present outside the house of appellants on today and it is viable to have a drain outside the house of appellant and to ensure proper water disposal of the house of the plaintiff respondent.
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> D.A site plan attached".

Though on the first issue, it has been opined that the drains existed outside the house of the appellants and these appear to have been closed by them. As regards the second issue, the Local Commissioner opined that in case the water is permitted to flow from point E to F, there would be no stagnation of water in the street and it would easily be disposed of without affecting anybody. However, a perusal of the site plan attached by respondent No.1/plaintiff shows a different direction of flow of water as compared to site plan produced by the Local Commissioner.

As the issue is regarding natural flow of water towards the main drain so that the same does not accumulate before the house of any of the parties. Leaving aside the individual problems of the litigants, the same could

be health hazard, so I deem it appropriate to remit the case back to the trial Court to examine the report submitted by the Local Commissioner and consider the issue afresh ignoring the ego of the parties and keeping in view the interest of justice so that free flow of waste water is there without the same accumulating at any place. The parties through their learned counsel are directed to appear before the trial Court on January 10, 2008.

The appeal stands disposed of accordingly.

(Rajesh Bindal)
Judge

December 10, 2007
"DK"